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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,127	08/11/2006	Bernard Boursier	0600-1070	5770

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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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02/26/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/589,127	Applicant(s) BOURSIER ET AL.	
	Examiner Lien T. Tran	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/11/06, 7/14/09</u> . | 6) <input type="checkbox"/> Other: _____ |

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

- **The specification does not have a " Brief Description of the Drawing" for figure 1. A brief description is required in application containing a drawing.**

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1: Line 7, the phrase “ said baking dough” does not have antecedent basis and the phrase is indefinite. It is not clear what is intended by “ said baking dough”; is it a dough that is capable of baking or a dough after baking or something else? Line 8, the recitation of “ an improving agent” is indefinite because it is not clear if this agent is the same improving agent cited on line 3 or some other improving agent. Lines 9-11, the recitation of “ selected from the group comprising” is unclear because it is not known if applicant intends for a Markush group. If a Markush group is intended, the proper language is “ selected from the group consisting of”. Line 10, the phrase “ alone or mixed together” is indefinite because it is not clear what is being alone or mixed together. Lines 7-13 are indefinite because it is not clear how the “ said baking dough” is related to the “ forming a dough” recited on lines 2-3. If the baking dough is obtained from the dough on lines 2-3, it is not clear how the baking dough can contain an improving and reducing agent cited if the dough forming on lines 2-3 does not contain such ingredients. (**For prior art application, the claim is interpreted to have one improving agent selected from the group recited.**)

In claim 3, the recitation of “ said improving agent” is indefinite because it is not clear which improving agent the claim is referring to; the one recited on line 3 of claim 1 or line 8 of claim 1.

Claim 4 has the same problem as claim with respect to the phrases “ selected from the group comprising and alone or mixed together”.

Claim 6 has the same problem as claim 3.

Claims 3 and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a method of making baked product in which an improving agent of branched maltodextrin is added. The branched maltodextrin has specific characteristics recited in claims 3 and 6. However, the specification does not disclose how this branched maltodextrin is made. Thus, claims 3 and 6 are not enabling because there is no teaching of how to make the branched maltodextrin.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brendel et al (2002/0192344) in view of Fuchs et al (6291005).

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Brendel et al disclose a method of making a baked product comprising the steps of forming a dough containing gluten, 60% water, 6.5% branched maltodextrins and .013% amylase, Kneading the dough, proofing the dough and baking the dough to form a baked product which is a bread. The branched maltodextrins have 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and a number average molecular mass of at most 4500g/mol. (see example 6 and paragraph 0018)

Brendel et al do not disclose reducing agents as claimed and the baked product is brioche or a hamburger roll.

Fuchs et al disclose baking additive for dough products. They teach enzymes such as amylases, proteases and lipoxygenases are all well known dough additives. (see col. 2 lines 65-67)

The Brendel et al dough contains wheat flour which contains gluten and also wheat gluten; thus, it is a dough containing gluten. The branched maltodextrins in Brendel have the same characteristics as claimed; thus, it inherently has the same molecular weight. It would have been obvious to one skilled in the art to substitute protease for amylase as substituting one conventional additive for another conventional additive because they are all known dough additives as shown by Fuchs et al. It would have been obvious to make the bread as hamburger roll if such configuration is wanted for the bread; this would have been an obvious matter of preference.

Claims 1-2,4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al (6030654) in view Atsumi (4405648) and Craig et al. (4005225).

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Thomas et al disclose a method of making baked products. The method comprises the steps of forming a dough containing wheat flour, fat replacers such maltodextrin in amount of .10-10% and water and baking the dough to obtain the baked products. The baked products include crackers, pastries, cookie, cakes etc... (see col. 2 lines 41-45, col. 4 line 40 through col. 5 line 35)

Thomas et al do not disclose kneading the dough, the use and amount of reducing agent as claimed and the baked product is a brioche or hamburger roll.

Atsumi discloses a method of producing bread. Atsumi teaches to add reducing agents such as cysteine, glutathione, powdered yeast etc... (see col. 1 lines 59-68)

Craig et al teach a method of making baked products. They teach to add reducing agents such as cysteine, glutathione, inactive dry yeast etc.. (see col. 8 lines 1-20)

It would have been obvious to include a kneading step in the Thomas et al process depending on the type of dough made; this parameter can readily be determined by one skilled in the art. The inclusion of a reducing agent in dough to improve the extensibility, reduce elasticity and shorten mixing time is notoriously well known in the art as exemplified in the Atsumi and Craig et al references. It would have been obvious to one skilled in the art to add a known additive for its art-recognized function. Since the additive is well known in the art, it would have been within the skill of one in the art to determine the appropriate amount through routine experimentation. The Thomas et al dough is a gluten containing dough because it contains wheat flour which has gluten. Thomas et al show that the amount of water varies with the type of

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dough; thus, it would have been obvious to determine the amount of water depending on the type of dough made. It would have been obvious to vary the formulation to make different types of dough products including brioche and roll as an obvious matter of preference.

Claims 3 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al in view of in view Atsumi and Craig et al. as applied to claims 1-2, 4-5 above, and further in view of Brendel et al (2002/0192344)

Thomas et al do not disclose the use of branched maltodextrin having the characteristics as claimed.

Brendel et al disclose a process for preparing a low-calorie food. The low-calorie food is made by replacing the high-calorie substances such as fat, maltodextrin, dextrose etc.. with a branched maltodextrin having between 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and Mn of at most equal to 4500g/mol. The branched maltodextrin is used in any food usually containing high-calorie substances. (see paragraphs 0021, 0028)

Thomas et al teach to make no fat or reduced fat baked products by replacing a the fat with a fat replacer that can be used in amount from .10-10%. The fat replacer includes maltodextrin. It would have been obvious to one skilled in the art to replace the maltodextrin or the fat in the Thomas et al product with the branched maltodextrin taught by Brendel et al because they teach high calorie substances such as regular maltodextrin and fat can be replaced with branched maltodextrin to make a low calorie product.

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Claims 1-2, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilibwa (6217930) in view of Atsumi (4405648) and Craig et al. (4005225).

Kilibwa discloses a method of making baked good. The method comprises the steps of forming a dough comprising wheat flour, bulking agents such as polydextrose in amount of 2-15% and water in amount of up to about 25%, kneading the dough and baking the dough to form baked products including rolls, bread, pizza etc.. (see columns 5-6)

Kilibwa does not disclose the use and amount of reducing agent as claimed and the baked product is a brioche or hamburger roll.

Atsumi discloses a method of producing bread. Atsumi teaches to add reducing agents such as cysteine, glutathione, powdered yeast etc... (see col. 1 lines 59-68)

Craig et al teach a method of making baked products. They teach to add reducing agents such as cysteine, glutathione, inactive dry yeast etc.. (see col. 8 lines 1-20)

The inclusion of a reducing agent in dough to improve the extensibility, reduce elasticity and shorten mixing time is notoriously well known in the art as exemplified in the Atsumi and Craig et al references. It would have been obvious to one skilled in the art to add a known additive for its art-recognized function. Since the additive is well known in the art, it would have been within the skill of one in the art to determine the appropriate amount through routine experimentation. The Kilibwa dough is a gluten containing dough because it contains wheat flour which has gluten. It would have been

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obvious to make the roll as hamburger roll when desiring such product. This would have been an obvious matter of preference.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilibwa in view of Atsumi and Craig et al as applied to claims 1-2, 4-5 above, and further in view of Brendel et al (2002/0192344)

Kilibwa does not disclose the use of branched maltodextrin having the characteristics as claimed.

Brendel et al disclose a process for preparing a low-calorie food. The low-calorie food is made by replacing the high-calorie substances such as fat, maltodextrin, dextrose etc.. with a branched maltodextrin having between 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and Mn of at most equal to 4500g/mol. The branched maltodextrin is used in any food usually containing high-calorie substances. (see paragraphs 0021, 0028)

Kilibwa teach to use bulking agent including maltodextrin or polydextrose in amount 2-15%. It would have been obvious to one skilled in the art to replace the maltodextrin or other bulking agent in the Kilibwa product with the branched maltodextrin taught by Brendel et al when desiring to make low-calorie product. Brendel et al teach high calorie substances such as regular maltodextrin and dextrose can be replaced with branched maltodextrin to make a low calorie product.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

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and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 11/993025. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to methods for producing baked products containing improving agent selected from branched maltodextrin, pyrodextrin and polydextrose. The difference resides in the addition of resistant starch or gum as fiber source in the copending case. However, this difference is not patentably significant because the addition of fiber to baked product and the use

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of resistant starch and gum as fiber source are well known. It would have been obvious to add resistant starch or gum as fiber material to the baked product when desiring to increase the fiber content of the baked product or to make a fiber-enriched product. The proportion of fiber material can vary depending on the fiber content wanted.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The foreign and NPL references on the IDS filed 8/11/06 were not considered because copies of the references were not provided.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien T Tran/

Primary Examiner, Art Unit 1794

February 23, 2010